

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT PIPER)	
Claimant)	
VS.)	
)	Docket No. 210,674
A-1 REFUSE)	
Respondent)	
AND)	
)	
FARM BUREAU MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from an Order entered by Administrative Law Judge Bruce E. Moore on August 29, 1997.

ISSUES

Claimant, in his brief to the Appeals Board, listed the issues as follows:

- “A. Whether Mr. Piper's employment was covered by the Kansas Workers Compensation Act?
1. Whether A-1 Refuse gross annual payroll exceeded \$10,000?
 2. Whether A-1 Refuse was a lawful corporation?
 3. Whether Mr. Piper can legally be excluded out of the workers compensation act when he does not own 10% of the corporation and fails to file a copy of the written declaration of exclusion with the employer as required in K.S.A. 44-543?

“B. Whether Farm Bureau is responsible based on the errors and omissions of its agent Lee Davis?”

Respondent, in its brief to the Appeals Board, listed the issues as follows:

- “A. Has Claimant met his burden of proof to show that he is entitled to insurance coverage?”
- “B. Has Claimant excluded himself from coverage by signing the application for insurance and by signing the KWC 50?”
- “C. Was there a meeting of the minds between Claimant and Insurance Carrier?”
- “D. Is [there] a basis to reform the insurance contract?”
- “E. Is Claimant equitably estopped from claiming coverage under the Act?”
- “F. Did Claimant and his wife follow corporate procedures to establish the ownership in A-1 Refuse Inc. that they claim to exist?”
- “G. Is Claimant an owner of 10% or more of the stock of A-1 Refuse?”
- “H. Were there errors and omissions on the part of the insurance agent and should this be the forum for that determination and its consequences?”
- “I. Who should pay the deposition costs in this case?”

The Kansas Workers Compensation Fund described the issues as follows in its brief:

- “1. Whether Claimant has abandoned his claims against the Fund on appeal.
- “2. Whether the findings of fact and conclusions of law of Judge Moore were supported by substantial competent evidence.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The facts are known to the parties and need not be repeated here for purposes of this Order. Furthermore, the preliminary hearing Order entered by the Administrative Law Judge sets out findings of fact in great detail and, to the extent any of those findings are in dispute, any contrary finding would not materially change this Order.

The Administrative Law Judge's Order is based, in part, upon his finding that respondent failed to file a certified copy of its Articles of Incorporation with the county register of deeds as required by K.S.A. 17-6003(c)(5).

K.S.A. 17-6003(c)(5) requires a copy of a corporation's articles of incorporation be filed in the office of the register of deeds of the county in which the corporation's registered

office is located. Although respondent filed its articles of incorporation with the secretary of state, it failed to file a copy of the articles in Saline County as was statutorily required.

Prior to the 1987 amendment to K.S.A. 17-6003, the law in Kansas was well settled as indicated by the court in State ex rel. McCain v. Construction Enterprises, Inc., 6 Kan. App. 2d 627, 631 P.2d 1240 (1981). McCain found K.S.A. 17-6003(c)(5) required recordation of the articles of incorporation in the office of the register of deeds of the county in which the corporation's registered office is located, and K.S.A. 17-6006 provided that corporate existence did not begin until the incorporators complied with all the provisions set forth in K.S.A. 17-6003. As such, the court stated:

"[N]o de facto or de jure corporation can exist until the articles of incorporation are filed both with the secretary of state and the appropriate county register of deeds' office." McCain at 629.

The Court further found that since the company in question failed to file its articles of incorporation with the appropriate county register of deeds office then it failed to come into existence as a corporation and there was no valid corporate entity to shield defendant from personal liability.

In 1987, the language of K.S.A. 17-6003 was amended. The Court in Fee Ins. Agency, Inc. V. Snyder, 261 Kan. 414, 420, 930 P.2d 1054 (1997), addressed this amendment and stated:

"[T]he legislature, by its 1987 amendment to 17-6003(d), did not intend to eliminate the requirement for recording articles of incorporation with the appropriate register of deeds to effectuate corporate existence. Rather, it changed the effective date of when a corporation came into existence by eliminating the provision that delayed corporate existence until the recording with the appropriate register of deeds if the articles were not so recorded within 20 days of filing the articles with the Secretary of State."

The Court further held that "the provisions of K.S.A. 17-6003(c)(5) which require that a duplicate copy of the articles of incorporation so certified by the Secretary of State be recorded in the office of the register of deeds of the county in which the corporation's registered office in this state is, or is to be, located is a prerequisite to corporate existence in Kansas." Fee at 421. (Emphasis added.) Therefore, under the facts in the case before the Appeals Board, it would appear as though respondent's failure to file its articles of incorporation with the Saline County Register of Deeds' office is fatal to its corporate status.

The Administrative Law Judge found this omission was fatal to respondent's corporate status. This is consistent with the Court's holding in Fee. This finding also proved fatal to claimant's claim as it led to the determination that claimant was

self-employed rather than an employee of a corporation. Therefore, to be covered under the Workers Compensation Act claimant was required to file an election under K.S.A. 44-542a, rather than having to file an election not to be covered under K.S.A. 44-543.

In River City Broadcasting, Inc. v. Systems with Reliability, Inc., 262 Kan. 680, 941 P.2d 937 (1997), the Kansas Supreme Court reexamined the 1987 amendment to K.S.A. 17-6003 and held that the articles of incorporation are effective on the filing date with the secretary of state when the provisions of K.S.A. 17-6003(c) are met, which includes recording with the appropriate register of deeds' office. However, if the recording with the register of deeds' office does not occur within the statutorily prescribed 20 days, the fee for such recording is increased but the effective date of corporate existence does relate back to the date of filing with the secretary of state. See River City at 685. Therefore, in River City, although the articles of incorporation were not recorded with the appropriate county register of deeds until July 28, 1994, the effective date of the corporate existence was found to relate back to the date of filing with the secretary of state on December 10, 1991.

In the case at hand, Piper, claimant's brief states that unknown to Judge Moore, respondent had filed its articles of incorporation with the Saline County Register of Deeds on August 20, 1997. Therefore, claimant argues that the effective date of respondent's corporate existence should date back to May 18, 1993, when it filed its articles of incorporation with the secretary of state. If respondent would have in fact filed its articles of incorporation with the Saline County Register of Deeds' office then such a result would be possible under the holding in River City.

Although claimant's brief states that the articles of incorporation were filed in Saline County on August 20, 1997, the exhibit attached to claimant's brief marked "Appendix B" merely shows that a certified copy of respondent's reinstatement certificate was filed in Saline County on August 21, 1997. Judge Moore noted in his decision that respondent filed a certified copy of its reinstatement with the Saline County Register of Deeds but failed to file a copy of the original articles with the county register.

The Kansas Supreme Court in McCain, Fee and River City as well as K.S.A. 17-6003(c)(5) all mandate the recordation of the articles of incorporation with the county register as a prerequisite to corporate status and existence. Since the record does not reveal any evidence that respondent filed a copy of its articles of incorporation with the Saline County Register but rather a copy of its reinstatement, respondent does not exist in Kansas as a legal corporation.

Nevertheless, counsel for claimant asserts that the Articles of Incorporation have been filed with the Saline County Register of Deeds. Filing the Articles of Incorporation would retroactively revive the corporation. However, pursuant to K.S.A. 1996 Supp. 44-555c(a), review by the Appeals Board is to be upon questions of law and fact as presented to the Administrative Law Judge. The assertion by counsel in his brief is not

evidence and the record cannot be supplemented by attachments to a brief to the Board. Therefore, the prudent course is to remand this matter back to the Administrative Law Judge for a hearing and determination on the question of whether the corporate status of respondent has changed and, if so, for a further order by the Administrative Law Judge to establish whether any such change of circumstances would alter his opinion on the remaining issues.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this matter be remanded to the Administrative Law Judge for the presentation of additional evidence as above indicated and for such further and additional proceedings and orders as may be reasonably required.

The Appeals Board does not retain jurisdiction over this matter and the parties are directed that they must file a new application for review and follow the appropriate procedures, should they be aggrieved, after they receive the additional order from the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: Gregory G. Lower, Wichita, KS
John D. Conderman, Manhattan, KS
Dan M. McCulley, Junction City, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director